NO. 11092

IN THE

United States

Circuit Court of Appeals

For the Ninth Circuit

MAUDE ANDERSON,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Appellee's Brief

On Appeal From the District Court for the Territory of Alaska, Division Number One.

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APPELLEE'S BRIEF

STATEMENT OF FACTS

The appellant was convicted by the verdict of a jury in the District Court for the Territory of Alaska, at Juneau, on April 7, 1945, of violating the White Slave Traffic Act (Act June 25, 1910, C 395, Sec. 2, 36 Stat. 825; 18 U.S.C.A. 398).

Appellant, Maude Anderson, was the owner and operator of a house of prostitution at Sitka, Alaska, and had in her employ as a prostitute one Marguerite Leota Miller. Prior to Miller's departure from Sitka in November, 1941, appellant

requested her to obtain some girls in the States to work for her (Anderson) as prostitutes, and if necessary, to pay the cost of their transportation to Sitka, and that appellant would reimburse her. On Miller's arrival in Seattle, Washington, she induced seventeen-year-old Gloria Virginia Bowman to travel from Seattle to Sitka, Alaska, and furnished her about $70.00 for her boat ticket. Bowman traveled from Seattle to Sitka immediately thereafter and upon arrival at Sitka reported to appellant and went right to work as a prostitute at appellant's house. Miller also arranged with two other girls in Seattle to go to Sitka as prostitutes and to work for appellant, and advanced them the airplane fare from Seattle to Sitka. Miller thereupon advised appellant by means of a telegraph code message, pre-arranged between the two of them in the presence of a third party, that two girls would be coming to Sitka by airplane and one by steamship. The wording of the telegram which had been previously arranged between Miller and appellant as a means of Miller's informing appellant how many girls the latter might expect from the States was, "Airmail two dresses today—Send coat on North Coast. Need the three badly." This telegram was found in a bureau drawer in appellant's home at the time of her arrest. Witness Miller was indicted on two counts by a Grand Jury at Juneau, Alaska, for violation of the White Slave Traffic Act, and pleaded guilty to both counts.

The errors assigned in the present case are as follows:

(A) Evidence of transportation of other girls than one named in the indictment and of method of distribu-

tion of prostitution earnings was incompetent and prejudicial.

(B) Abuse of discretion in denying defendant's motion for continuance and in rejecting evidence offered by her to show prosecution witness Miller motivated by spirit of revenge.

(C) Witness Bowman's testimony of agent Miller's acts and declarations, made and done beyond defendant's presence, could not prove existence of agency and were inadmissible.

(D) Accomplice Miller's testimony of contents of letter which she claimed defendant had written to her but which Miller had deliberately destroyed because she deemed it incriminatory was neither corroborative nor admissible.

(E) Telegram, Plaintiff's Exhibit 1, which accomplice Miller testified she sent to defendant, was admitted without proof of having been sent at defendant's request or direction and was not binding on defendant.

(F) Court refused defendant's request to charge on subject of credability of accomplice Miller's testimony, as required by Section 4263, CLA 1933, and on subject of necessity of accomplice's testimony being corroborated by independent evidence, as required by Section 5352, CLA 1933, and yet its own instructions entirely ignored Section 4263. 4th Subdivision, and misstated and misconstrued requirements of Section 5352.

(G) Court refused defendant's request to charge, notwithstanding Court itself gave no charge on subject of necessity of proper proof of relationship of agent and principal between witness Miller and defendant.

(H) Court refused defendant's request to charge that no crime would be committed, but on the contrary charged that a crime would be committed by defendant's promise or agreement with Miller to pay or furnish the means of transportation of the girl to be transported even though defendant did not actually pay or furnish any such means of transportation.

(I) Court's instructions placed burden upon defendant to prove she was not an accomplice of witness Miller.

(J) Entire lack of independent evidence. as required by Section 5352, CLA 1933, to corroborate the accomplice Miller's testimony.

The plan of this brief is to answer, in the order above listed, the foregoing specifications of errors.

ISSUES

I.

Argument Answering Appellant's Specification of Error (A)

Appellant maintains that admission of evidence of the transportation of other girls than the one named in the indictment and evidence of the method of distribution of prostitution earnings was incompetent and prejudicial.

It is a well established principle of law that evidence of other similar offenses is admissible to show intent. In the past this principle has been liberally applied in cases of violation of the Mann Act. Thus in Kinser vs. United States (CCA 8) 231 F. 856, three other prostitutes were permitted to testify

that they acted as prostitutes for defendant; the Court holding, "The admissibility of other transactions showing intent has been fully considered by this Court. Withaup vs. United States, 127 Fed. 530, 62 CCA 328; Olson vs. United States, 133 Fed. 849, 67 CCA 21; Exchange Bank et al vs. Moss, 149 Fed. 340, 79 CCA 278; Thomas vs. United States, 156 Fed. 897, 84 CCA 147, 17 LRA (NS) 720; Schultz vs. United States, 200 Fed. 234, 118 CCA 420. In view of these authorities it seems entirely a work of supererogation to cite those from elsewhere."

This court has ruled on the exact question at issue in the case of Tedesco vs. United States (CCA 9) 118 F. (2d) 737 at 740. In that case, in ruling on the admissibility of evidence to the effect that another girl was similarly transported for prostitution, the Court states, "Where the intent of the party is matter in issue, it has always been deemed allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate or establish his intent or motive in the particular act directly in judgment. Wood vs. United States, 41 U. S. 342, 360, 16 Pet. 342, 360, 10L Ed. 987 per Mr. Justice Story. This exception has been applied with uniformity down through the years."

Evidence as to the method of distribution of prostitution earnings is competent under this same exception to the rule against admitting evidence of other offenses. Thus in the case of United States vs. Krulewitch (CCA 2), 145 F. (2d) 76, Justice Learned Hand states, "The other question is of

the admission of a part of the testimony of one Mary Smith—also a prostitute—who swore that the accused had lived off her earnings while she was so engaged. So far, her testimony was competent upon the issue of his purpose in taking Joyce to Florida, for it fell within the well established doctrine that other instances of similar conduct are competent to prove intent (or purpose) upon the occasion for which the accused is on trial. Neff vs. United States, 8 Cir., 105 F. 2d 688; Cohen vs. United States, 5 Cir., 120 F. 2d 139."

In the Neff case quoted above the Court states, "Questions as to the admissibility of this class of evidence are within the wise discretion of the trial Court and its rulings as to the same should not be interfered with by a reviewing Court unless it is clear that the questioned evidence has no connection or bearing upon any of the issues involved in the charge."

In the present case it is impossible to assert that the questioned evidence "has no connection or bearing upon any of the issues involved in the charge" as the intent or purpose in transporting Bowman to Alaska is unquestionably a material matter.

II.

Argument Answering Appellant's Specification of Error (B)

Appellant contends that denial of defendant's motion for continuance by the trial court constituted an abuse of discretion. "The fundamental principle running throughout the subject of continuances is that the granting or refusal of a

continuance rests in the discretion of the Court to which the application is made. Its ruling in reference thereto will not be disturbed by an appellate tribunal unless an abuse of discretion is shown." 12 Am. Jur. 450.

This rule has been upheld by this Court in Shea vs. United States, 260 F. 807 in which the leading cases of Isaacs vs. United States, 159 U. S. 487, 16 Sup. Ct. 51, and Crumpton vs. United States, 138 U. S. 361, 11 Sup. Ct. 355 were quoted, enunciating this doctrine.

In Hardy vs. United States, 186 U. S. 224, on appeal from the District of Alaska, 2nd Division, the Supreme Court quoted the Isaacs case referred to above and Golsby vs. United States, 160 U. S. 70, to the effect "That the action of the trial Court upon an application for continuance is purely a matter of discretion, and not subject to review by this Court, unless it be clearly shown that such discretion has been abused, is settled by too many authorities to be now open to question."

There is no clear showing of abuse of discretion by the District Court in denying defendant's motion for continuance in this case. "The rule is practically universal that a continuance will not be granted to enable a party to obtain the testimony of an absent witness unless it appears that the applicant has used due diligence to procure the attendance of such witness. The question as to what constitutes sufficient diligence must be left to the sound discretion of the trial Court." 12 Am. Jur. 469.

Due diligence was not exercised by defendants in this case.

The Government witness and the defendant were present in sufficient time and there was no reason why the witnesses, Lou Dixon Northrup and Irene Holmquist, could not have been present in ample time had due diligence been exercised by the defendant and her attorneys. The indictment in this case was filed on October 24, 1944, and defendant was arrested on November 9, 1944, being released on bond. She was arraigned on March 26, 1945. On the face of the indictment as the first of the three witnesses appearing before the Grand Jury is listed the name, Marguerite Leota Miller, so that it was no surprise that she appeared as a Government witness in the case. Yet at no time from October 24, 1944, until the 4th of April, 1945, was any attempt made to subpoena the two witnesses Northrup and Holmquist in order to show the alleged animus of Miller. It is submitted that far from showing an abuse of discretion in denying the motion for continuance, the Court would have been remiss in its duty had it allowed the continuance with the ensuing costs to the United States Government, in the face of such obvious lack of diligence.

The fact that after the trial was begun defendants did make efforts to obtain the witnesses is of no bearing on the Court's exercise of its discretion. In Armour & Co. vs. Kollmeyer (CCA-8) 161 F. 78, 16 LRA (NS) 1110 the Court held that "proof of reasonable but futile diligence to procure the attendance of testimony of a witness about a year before the trial, and for about a week preceeding the trial without evidence of diligence between such dates, is not sufficient grounds for a continuance."

The Court then stated, "But the granting or refusing of a

motion for continuance is entrusted to the judicial discretion of the trial Court, and it is only when the record shows an abuse of that discretion that an Appellate Court will reverse a judgment on account of its exercise. No such abuse appears from this record."

Much greater diligence was exercised in the Kollmeyer case than in the one at Bar, as in the present case no attempt whatsoever was made to subpoena the witnesses until after the case came up for trial.

Even had the defendant exercised due diligence in this case, which obviously she did not, the Court in its discretion was justified in denying the continuance on the grounds that the offer of proof (Tr. 182) clearly shows that the expected testimony of the two witnesses was merely cumulative and impeaching. By these witnesses it was intended to show that the Government witness, Margie Miller, had planned to set up "her own private house of prostitution" in a building which "Maude Anderson was going to do some work on and enlarge" and that Margie Miller had a grudge against "Maude Anderson for not building this house of prostitution."

This evidence is purely cumulative as both Maude Anderson and Clarence Rands had already given in essence the same testimony as that desired to be elicited from Northrup and Holmquist.

Maude Anderson stated (Tr. 118):

"Q. What did she (Margie Miller) say in the con-

versation which took place in your house, in the Lake View Cottage at Sitka?

A. She wanted to lease the place from me and get herself some girls."

And (Tr. 128) "She was mad at me because she didn't get the place next door and she stayed, and when I wanted to build a home, she stayed then until she disposed of the living room set and other things."

And (Tr. 168)

"Q. After Margie Miller returned from the States after her trip of November, 1941, did you and she have any conversation in Sitka about why you hadn't built that house?

A. All I told her was on account of the War breaking out I didn't build and had changed my mind.

Q. What did Margie Miller say?

A. Well, she got pretty mad about it."

Clarence Rands had previously testified to the same effect (Tr. 109, 110).

"Q. Did you and Margie Miller, or she ever make any statement to you against Maude Anderson because of the fact that her arrangements with Maude Anderson about the construction of a building for the use of prostitution was not complied with?

A. Yes, I have.

Q. You did?

A. Yes.

Q. When was it? When was it the conversation took place?

A. I don't recall the exact date. It was after she come back from the south, probably in January or February of the next year. That is when she come back from the States.

Q. Where was Margie Miller living at that time?

A. A little house two doors from the house of prostitution.

Q. What, if anything, did she say in reference to Maude Anderson?

The Court: Exactly what was said in this conversation?

A. Well, Margie was quite peeved and put out because the little house she figured on building wasn't built. I knew there was some riff between Margie—"

Regardless of the question of whether diligence was exercised, it is always within the discretion of the trial court to deny a continuance for the purpose of securing cumulative evidence.

In Isaacs vs. United States, 159 U. S. 487, supra, as a reason for upholding the denial of a continuance by the trial court, the Supreme Court stated, "In fact, all that the affidavit showed that the witness could prove was established by other testimony, including that of defendant himself."

Moreover, even had this testimony not been cumulative, and even had due diligence been exercised, the Court would have

been justified in denying the continuance in its discretion, as the offer of proof clearly shows that the expected testimony is impeaching and serves no other purposes. The object of the testimony was to impeach Margie Miller by showing animus and false statements on her part.

"It is the rule that a continuance is properly refused if the testimony of the absent witness would only tend to impeach a witness of the adverse party." 12 Am. Jur. 468; Underhill's Criminal Evidence P. 596; Taylor vs. State 89 Tex. Cr. 112, 229 SW 552.

Thus it is submitted that the trial Court, far from showing abuse, exercised sound discretion in denying the motion for continuance, as due diligence was not shown and as the expected testimony was purely cumulative and impeaching.

III.

Argument Answering Appellant's Specification of Error (C)

Appellant argues that Government witness Bowman's testimony of agent Miller's acts and declarations, made and done beyond defendant's presence, could not prove existence of agency and were inadmissible. She cites the case of Shama vs. United States, 94 F. (2d) Page 1, in an attempt to infer that witness Bowman's testimony was for the purpose of proving existence of an agency between appellant and witness Miller, while in fact Bowman's testimony was solely for the purpose of showing the transaction between her and Miller pursuant

to prior arrangements made between appellant and Miller at Sitka, Alaska. The Government does not rely upon witness Bowman's testimony to prove existence of an agency between appellant and Miller. Moreover, the testimony showed an actual conspiracy and the rule is well settled that "Where it appears that two or more persons have conspired to commit an offense, everything said, done, or written by one of them during the existence of the conspiracy, and in the execution or furtherance of the common purpose, is admissible in evidence against the others." 22 C.J.S. Sec. 754; Holt vs. United States, 94 F. (2d) 90; D'Allessandro vs. United States, 90 F. (2d) 640; Coplin et al vs. United States, 88 F. (2d) 652, 57 Sup. Ct. 929; 301 U. S. 703; Mayola vs. United States, 71 F. (2d) 65.

And this is so where the acts or declarations are made in the absence of the defendant. In this circuit in Sugarman vs. United States (9 Cir.), 35 F. (2d) 663, 665, it is said "—the true rule is that the acts and declarations of one conspirator, in furtherance of the object of the conspiracy and during its existence, are binding on all members of the conspiracy, whether present or absent—." Ginsberg vs. United States, (CCA Tex.) 96 F. (2d) 433; Querica vs. United States, (CCA Mass.) 70 F. (2d) 997; Zarate vs. United States, (CCA Fla.) 41 F. (2d) 598.

Witness Margie Miller was a co-conspirator and hence everything she said in Seattle pursuant to and in furtherance of the conspiracy was admissible against appellant. It is not necessary that the indictment or information should charge

a conspiracy, but, where there is proof of concert of action between two or more persons in commission of an offense, acts and declarations of one are admissible against the other, although no conspiracy has been charged. Lee Dip vs. United States (9th Cir.) 92 F. 2d 802 Cert. denied, 58 S. Ct. 526: 303 U. S. 638, 82 L Ed 1099; Robinson vs. United States, (CCA 9) 33 F. 2d 238; Sprinkle et al vs. United States, (CCA 4) 141 F. 811; Vilson vs. United States, (CCA 9) 61 F. 2d 901; Cossack vs. United States, (CCA 9) 82 F. 2d 214.

In Coplin vs. United States, (CCA 9) 88 F. 2d 652 at Page 660, this Court quoted from Cossack vs. United States, supra, as follows:

> "When it is established that persons are associated together to accomplish a crime, or series of crimes, then the admissions and declarations of one of such confederates concerning the common enterprise while the same is in progress are binding on the others. It is not the name by which such a combination is known that matters, but whether such persons are working together to accomplish a common result. * * * The legal principle governing in cases where several are connected in an unlawful enterprise is that every act or declaration of one of those concerned in the furtherance of the original enterprise and with reference to the common object is, in contemplation of law, the act or declaration of all. * * * 16 C. J. p. 646."

IV.

Argument Answering Appellant's Specification of Error (D)

Since the contents of the letter Miller received from defendant was in pursuance, execution and furtherance of their common purpose it clearly falls within the rules outlined above and the authorities heretofore cited to the effect that everything said, done or written by one co-conspirator during the existence of the conspiracy and in furtherance of the common purpose is admissible in evidence. 22 C.J.S. Sec. 754. In that letter, in referring to the two girls about whom Miller had wired defendant in code, Miller testified that defendant wrote "the two girls hadn't shown up and she didn't know where they were. She was talking about the girls, the houses and that business was bad—."

Also

> "Q. Did she state anything in that letter about Gloria Bowman?
>
> A. Yes. She said one girl had arrived by boat but those on the plane didn't." (Tr. 42)

Clearly and unquestionably this writing was in furtherance of the common purpose and made during the existence of the conspiracy, and the rule is settled that secondary evidence is admissible upon proof that the primary evidence cannot be produced, the matter of proof being largely discretionary with the trial Court. Had the letter still been in existence it cannot be disputed that upon proper identification it would be ad-

missible as not only is it a statement of a co-conspirator in furtherance of the common purpose and made during the existence of the conspiracy as stated supra, but it also constitutes an admission by the defendant as to material facts. An admission made by a defendant is admissible in evidence regardless of whether it is made after the commission of the offense charged.

The other argument set forth by the appellants, that because the witness Miller had destroyed the letter she should not be permitted to testify as to its contents, is also erroneous. There are numerous cases establishing the rule that one who has destroyed a document may testify as to its contents in the absence of a destruction for the purpose of defrauding the other party. 32 C.J.S. p. 752; Beem vs. Beem, 193 Ind. 481, 141 NE 81; Miller vs. United States, 21 F. 2d 32, certiorari denied, 276 U. S. 621.

In the Miller case cited, supra, contents of a destroyed letter were testified to by a witness who had destroyed it. The Court held: "The receipt of the letter was a mere link in a chain of circumstances and the question as to whether the letter was from Miller or had any connection with him was a question of fact for the jury on the evidence set forth."

In the present case, prudence required that witness Miller destroy the letter in order to protect herself and the other party, the defendant in this case. There is no possible fraudulent motive as would be the case had the document destroyed been the basis for a contractual cause of action. This letter

was of a type which normally would be destroyed and the destruction does not raise an inference of fraud.

The exact question at issue was ruled on in the case of United States vs. Doebler, 1 Baldw. 519, 520; Wigmore on Evidence, 3rd Edition, Vol. IV, P. 354, note 1 where a letter was sent by the defendant to an accomplice. He destroyed it, probably as a precaution. The Court permitted the accomplice to testify as to the contents of the letter.

This case has never been overruled and in light of the general rule in regard to admissibility of secondary evidence of this type it not only is, but rightfully should be, the law. The arguments made by the appellant could well be addressed to the jury as to the weight to be given the evidence but it was not error to permit the jury to consider this testimony along with the other statements made by the witness Miller.

V.

Argument Answering Appellant's Specification of Error (E)

Appellant contends that the telegram, Plaintiff's Exhibit 1, which accomplice Miller testified she sent to defendant, was admitted "without proof of having been sent at defendant's request or direction." This contention of appellant's is refuted by the very extracts from the transcript of the record quoted in her brief (Appellant's Opening Brief, pages 27 to 31), but the question of whether the telegram was sent at defendant's request is irrelevant as to this specification of error since the exhibit was clearly admissible on other grounds.

It falls within the same general rule discussed supra "that where it appears that two or more persons have conspired to commit an offense, everything said, done or written by one of them during the existence of the conspiracy, and in execution or furtherance of the common purpose is admissible in evidence against the other." 22 C.J.S. p. 1288.

This principle was followed in State vs. Jones, 20 P. 2d 514, 137 Kan. 514. The syllabus of that case states, "In prosecution for murder, where there was some evidence of conspiracy between defendant and two sons, letters passing between alleged co-conspirators and found in defendant's possession held admissible."

The following cases uphold the rule that letters written by a conspirator in connection with the conspiracy are admissible against a co-conspirator although he was not present when they were written: Burns vs. United States, 279 F. 982; Lewis et al vs. United States, 38 F. 2d 406; Nix vs. United States, 4 F. 2d 652.

In Browne vs. United States, 290 F. 870, "A letter written by one alleged conspirator to a co-conspirator, but never received by the latter, was admissible against all conspirators, if it was an act adapted to carry out the conspiracy."

In the present case, there was ample evidence to show that the telegram was adapted to carry out the conspiracy by notifying defendant that the girls had been sent as she had requested.

The telegram in the pesent case was also properly admitted

into evidence on the ground that it was corroboration of witness Miller's testimony. "Letters and telegrams may be asmitted . . . on the grounds that they tend to corroborate other evidence in the case, whether written by a third person or by one party to another." 32 C.J.S. p. 602.

In upholding this rule, the Court stated in Phillips vs. Catts, 124 S. 884 at 886, (ALA):

"Appellant suggests the possibility of aiding and abetting a fraud in that ruling of the Court whereby it admitted in evidence over appellant's objection, the letter addressed by plaintiff to Dilworth, the person to whom the coal lands were leased. . . . The letter showed negotiation with Dilworth for a lease. Defendant suggests that it may have been prepared for the occasion of the trial, and so its admission would open a way for the fraud. But any witness may commit perjury. That is always a question for the jury. The Court passes only on questions of competency, relevancy and materiality. There was no error."

In Tallapoosa County Bank vs. Kreis (CCA 5) 45 F. 2d 382, the same rule was upheld, the Court stating:

"We are of opinion that the rejected letters were admissible for the purpose of corroborating Gray's testimony. . . . It was error to refuse to admit the letters offered in evidence by appellant."

Appellant's contention in the present case that the telegram was self-saving or in furtherance of a grudge is unsupported

by the evidence as even according to appellant's theory the witness Miller was not given cause to be angry with Maude Anderson until after she learned that Anderson had not built the house for Miller, and the earliest notice to this effect was by Maude Anderson's letter written after the date of this telegram.

Clearly no error was committed by admitting the telegram into evidence as corroboration of witness Miller's testimony and as a document written during the existence of the conspiracy and in furtherance of the common purpose.

VI.

Argument Answering Appellant's Specification of Error (F)

Appellant contends that the Court erred in refusing her request to charge on the subject of the credibility of accomplice Miller's testimony and on subject of the necessity of corroborating an accomplice's testimony, despite the fact that she admits that the time for submission of such requests is governed by the Court's Rule 30 and that appellant's requests were submitted much too late.

Rule 30 states "Instruction to Jury. In every case, civil, or criminal, tried before a jury, the attorney for each side may, as soon as the jury is impanelled, submit to the court copies of such requests for instructions as he desires the court to charge; additional requests may be submitted at any time before the argument on the submission of the case to the jury

is concluded; each request shall be on a separate sheet of paper, and counsel may cite thereunder the authorities supporting each request." (Tr. 195)

The Court in refusing appellant's requests stated, "Presented at 9:55 A. M. Saturday A. M.; too late for consideration under our rules. Case finished Friday, 4:30 P. M. and Jury instructed Saturday, 10:00 A. M." (Tr. 194)

The Court was certainly within its rights in refusing to consider these requests.

"As a general rule a party who desires a particular instruction to be given must request the same within the time fixed by statute or by rule of practice; otherwise a failure or a refusal to give the requested instruction is not error." 23 C.J.S. p. 964.

In Commonwealth vs. Hassan, 126 N. E. 287, 235 Mass. 26, the Supreme Judicial Court of Massachusetts upheld the refusal of the trial Court to give requested instructions submitted during argument even though there was no written court rule to that effect.

Among other cases upholding the right of a trial Court to ignore requested instructions submitted too late under the court rule or statute in force, are the following: McFadden vs. United States (CCA 3) 165 F. 51; Flatters vs. State, 127 N. E. 5, 189 Ind. 287; State vs. Berryhill, 177 So. 663, 188 La. 549; State vs. Townley et al, 182 N. W. 773, 149 Minn. 5; Merka vs. State, 199 S. W. 1123, 82 Tex. Cr. 550; Commonwealth vs. Sacco, 156 N. E. 57 (Mass.).

Regardless of the timeliness of the requested instructions it is submitted that the Court's charge in regard to Sec. 5352, C.L.A. 1933 was adequate. The Court quoted the statute (and without becoming involved in the labyrinth of appellant's arguments) and even assuming appellant's statement that the additional words of the Court mean "nothing whatever," it is submitted that the instructions adequately explained the law as to the requirement of corroboration. No juryman could be expected to go through the mental contortions necessary to twist the Court's instruction into a refutation of the clearly expressed words of the statute.

The objection as to the failure to instruct "that the testimony of an accomplice ought to be viewed with distrust" might possibly have had some basis if appellant had made a timely request so to instruct and had she pointed out to the Court at the conclusion of its charge that this subject had been omitted. There is authority, however, even in the face of a properly submitted request for instruction and specific objection and exception to a charge omitting this point, for holding it no error to refuse so to instruct the jury.

In interpreting an identical California statute the Court stated in People vs. Funtas, 182 P. 785,

"The Court should have instructed the jury as requested by the defendant to the effect that the testimony of an accomplice is to be viewed with distrust."

But that its failure so to do is not reversible error because—

"An accomplice ordinarily testifies with a view to protecting himself from prosecution, or to concealing his own guilty conduct, or in the hope of earning a reward or gaining a pardon. Such testimony is tainted. But the jury, being presumably men of ordinary understanding, know this; and the Court having to some extent discredited such testimony by instructing the jury, as required by law, that they could not convict the defendant upon the uncorroborated testimony of an accomplice, they would, in following such instruction, closely scrutinize the testimony referred to and naturally and necessarily view it with distrust."

Appellant admits (Appellant's Opening Brief, P 47 (2)),

"The defendant well might have been charged with negligence, or perhaps even with misleading the Court had she stood silent throughout the reading of the Court's instructions to the jury without mention that nowhere therein was the jury told 'to view the testimony of an accomplice with distrust'."

Yet this is exactly what the defendant did. Care was taken at the conclusion of the Court's charge to specifically point out other objections raised by the defendant to the charge. Mr. Robertson, Attorney for defendant, stated:

"We also take exception to the Court's Instruction No. 6. In that connection I call attention to Defendant's Requested Instruction 5 and 6 and the Requested Instruction I handed the Court yesterday. We feel in that that the Court's instruction does not bring out the fact that the statute requires that

the corroborated evidence of an accomplice must go further than simply tending to connect the defendant with the commission of a crime." Etc. (Tr. 209)

Nowhere was an objection made to the failure to charge in regard to the credibility of an accomplice's testimony. Had it been pointed out to the Court that this statutory instruction had been omitted there is little doubt that the Court would have supplemented his charge to include it. Defendant's silence on this point had the effect of misleading the Court.

Certainly the vague reference to Defendant's requested instructions which the Court had previously properly informed defendant would not be considered, cannot be regarded by any manner of interpretation as having called the Court's attention to the omission.

In Commonwealth vs. Hassan (cited supra 126 N. E. 287, 235 Mass. 26) the Court stated, "During the argument of the District Attorney Counsel for defendant handed thirteen written requests for instructions to the Clerk of the Court, who presented them to the presiding Judge. Counsel for the defendant neither said nor did anything further about the requests until after the charge when he orally called the attention of the Judge to his failure to give requests numbered 4, 7 and 13. The Judge refused to consider them on the ground that they were not seasonably presented. No exception was taken to the charge in any particular, but exception was saved to refusal to grant these three requests—

"In McMahon vs. O'Connor, 137 Mass. 216, it was said by Mr. Justice Holmes in 1884 that

'It is the undoubted right of parties to present requests for rulings, and to have them passed upon. But the right is not infringed by requiring it to be exercised in a reasonable way'—"

In the Hassan case the Supreme Judicial Court of Massachusetts upheld the lower Court's refusal to consider the requested instructions submitted too late. The Court stated that,

"If at its close substantial omissions or errors are noted in the charge they could be pointed out to the Judge and if he failed to make the necessary corrections or additions exceptions could be had."

In the case of McFadden vs. United States (CCA 3) 165 F. 51, cited supra, the Court similarly held that the requests to charge "were presented so late according to the record, that they could not be examined properly, which itself justifies the refusal of them as a whole."

Appellant quotes three cases interpreting the California statute similar to Sec. 4263 C.L.A. 1933, (Appellant's Opening Brief, P. 40) in an attempt to show that omission of this charge constitutes error.

An examination of these cases reveals that the Court was properly requested to make the instruction desired in all of them. In People vs. Bonney, 33 P. 98, the Court specifically pointed out that "defendant duly excepted."

In People vs. Sternberg, 43 P. 201, the Court was properly

requested to instruct as to the credibility of an accomplice's testimony, and not only refused to give the requested instruction but gave the obviously erroneous one,

"You take up the testimony of the accomplice and judge it as you do the testimony of all others."

The implied provision of the ruling of the California courts in the three cases cited by appellants is that there would be no error in neglecting to instruct as to the credibility of an accomplice's testimony in the absence of a properly requested instruction and specific exception. This implied ruling is made express by a later case on the subject.

In People vs. Rose, 183 P. 874, interpreting the same statute, the California Court stated,

"It follows that failure to give the instruction under the circumstances of this case can hardly be said to be error, inasmuch as the defendant did not request the Court to give it."

The Oregon Courts interpreting the same provision also hold that it is not error to fail to give the statutory instruction in the absence of a proper request and specific exception taken. The Supreme Court of Oregon stated in the case of State vs. Edmunson, 249 P. 1099, 120 Ore. 297,

"Assignment 7 to 14 is based upon the failure of the Court to give the statutory instruction, 'That the testimony of an accomplice ought to be viewed with distrust'—One of the principal witnesses for the State was the co-defendant of Edmunson.—

"If the Judge's attention had been called to it he doubtless would have given it. It has recently been held by the Court that in order for the defendant to have availed himself of the error it was necessary for him to have requested the instruction and excepted to the refusal of the Court to give it. State vs. Keelen et al 106 Or. 331, 338, 211 P. 924."

This Court has also held,

"Where no exceptions were taken to the instructions the appellate Court cannot consider assignments of error based on portions of an instruction." Vedin vs. U. S. 4 Alas. Fed. 747, 257 F. 550, certiorari denied 4 Alas. Fed. 813, 40 Sup. Ct. 11, 250 U. S. 663.

Thus in the light of appellant's failure to seasonably request a charge on the credibility to be given to an accomplice's testimony, and her neglecting to make a specific exception to this part of the Court's charge to the Jury, the subject is not a proper one to take up the time of this Court on appeal.

VII.

Argument Answering Appellant's Specification of Error (G)

Appellant contends that the Court erred in refusing to give a requested charge in regard to the necessity of proper proof of relationship of agent and principal between Miller and defendant.

For the reasons stated in answering appellant's specifica-

tion of Error (F) it is submitted that this is not a proper question to be brought before this Court as the request was supmitted too late under the rules of the trial court and no specific objection or exception mas made in regard to the Court's failure to charge on this subject.

Moreover, defendant's Requested Instruction No. V was irrelevant as the testimony of witness Miller was admissible under the rule discussed supra that everything done or written by one conspirator during the execution or furtherance of the conspiracy is admissible in evidence against the others. As this rule has been discussed at length in connection with appellant's Specification of Error (C) (this brief pp 12 to 14) authorities will not be repeated now.

State vs. Jarvis, 23 P. 251 (Ore.), cited by appellant (appellant's opening brief P. 58) apparently for the proposition that a charge in regard to proof of relationship of principal and agent is necessary in addition to one in regard to the necessity for corroborating the testimony of an accomplice, makes no mention of agency whatever and merely holds that under the statute in effect in Oregon a conviction cannot be sustained upon an accomplice's testimony without corroboration. Thus it apparently has no bearing on this specification of error.

It is further submitted that the requested instruction does not correctly express the law in stating that the "witness Miller cannot by her own acts or declarations establish herself to have been the agent of the defendant." This requested in-

struction arises from a failure to distinguish between statements of an alleged agent testified to by a third party and testimony by the alleged agent on the witness stand as to the facts of agency.

This point was not only clearly ruled on in Shama vs. United States, 94 F. 2d 1, at page 5 (CCA 8), but this court upheld the same doctrine in Nygard vs. Dickinson 97 F. 2d 53, 57 (CCA 9), a case on appeal from the District Court for the United States for the Territory of Alaska, Division Number One, wherein it stated:

"The declarations of an agent made out of court are inadmissible to prove his agency, but 'the direct testimony of an agent on the witness stand is admissible to prove his authority and the extent thereof.' 3 C.J.S. p. 287, Agency Sec. 324, See Attleboro Mfg. Co. vs. Frankfort Marine, etc. Ins. Co., 1 Cir., 240 F. 573, 581; Handley vs. Johnson 104 Cal. App. 606, 286 P. 428; Sierra Paper Co. vs. Mesmer, 45 Cal. App. 667, 188 P. 605."

VIII.

Argument Answering Appellant's Specification of Error (H)

The basis for this specification of error is appellant's contention that the Court erred in instructing the Jury that "it would be sufficient to show that defendant caused the transportation of Bowman if she agreed with or directed the witness Miller that Miller should procure a girl for the defendant, to be transported in interstate commerce, for the purpose

of prostitution, and that pursuant to such agreement or directions the witness Marguerite Miller procured the girl Jean LaRue to come from Seattle, Washington, to Sitka, Alaska, for defendant for the purpose of prostitution or other immoral purposes, and that defendant agreed to reimburse or pay the witness Marguerite Miller for said girl's transportation or expenses or any part thereof." Appellant argues that in addition it must be shown that the defendant did actually reimburse or pay the witness Miller for the transportation in order for her to be guilty of having "caused" Bowman to be illegally transported. In her requested instruction appellant states "that a promise or agreement by defendant to furnish the means of such transportation, if she did not actually furnish such or any of such means of transportation, does not constitute the defendant guilty of the crime with which she is charged." (Tr. 192) In other words they are in effect saying that if a person directs an accomplice to cause the transportation of a girl and agrees to reimburse the accomplice for the expenses of the girl's transportation and then does the additional wrongful act of refusing to repay the accomplice after the girl has been transported and put to work as a prostitute, the person escapes guilt for "causing" the illegal transportation. Obviously this is fallacious as the question of whether the accomplice is repaid after the transportation has occurred has no bearing on the issue of whether defendant "caused" the girl to be transported.

In the case of Schrader vs. United States (CCA 1) 94 F. 2d 927 the defendant had nothing to do with the financing of the transportation and yet was held to have "caused" the girl

to be illegally transported.

In Harris et al vs. United States, 114 CCA 406, 194 Fed. 634, affirmed 227 U. S. 340, 33 Sup. Ct. Rep. 289, the Court held that defendant had "caused" the girls to be illegally transported in a case very similar to the one at Bar. In sustaining the conviction of Harris the Court held:

"Inasmuch as there was nothing unlawful, under the statute, in receiving these women or advancing the charges on their baggage, conviction must rest on the theory that respondent Green went to Charleston and advanced the railroad fare while acting as agent for the respondent Harris."

Thus this decision, as well as that of the Schrader case, holds that one can cause the illegal transportation of a girl in interstate commerce without advancing the money or even having anything to do with the financing of the transportation of the girl. The Supreme Court affirmed the decision of the Harris case on this point.

The Court in its instruction in the case at Bar erred, if at all, in behalf of the defendant by requiring the prosecution to prove that the defendant "agreed to reimburse or pay the witness Marguerite Miller for said girl's transportation or expenses or any part thereof" in addition to showing that defendant directed Miller to procure the girls for defendant to be transported in interstate commerce for the purpose of prostitution.

IX.

Argument Answering Appellant's Specification of Error (I)

Appellant takes exception to the Court's charge that, "Marguerite Miller is admittedly an accomplice in the crime charged against defendant." (Tr. 201), contending that this placed the burden on defendant to prove she was not an accomplice of witness Miller.

The most, however, that can be implied from the Court's instruction on this point is that Miller was an accomplice in the commission of the crime charged. Of whom she is an accomplice is not stated by the Court, nor inferred by it. The question of defendant's complicity is clearly left to the province of the Jury by the subsequent instruction:

"You are, therefore, instructed that, if you believe from all the evidence in this case beyond a reasonable doubt that the defendant Maude Anderson was concerned in the commission of the crime charged or aided or abetted in its commission, though not present, and whether she directly committed the act constituting the crime or merely aided or abetted in its commission, though not present, you may find her guilty as a principal." (Tr. 202)

Thus it is left to the Jury to determine whether the defendant is to be deemed a principal as defined in Sec. 5044, Compiled Laws of Alaska, 1933:

"Principals, who Deemed Such. All persons concerned

in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the crime or aid and abet in its commission, though not present, are principals, and to be tried and punished as such."

Moreover in its later instructions the Court states:

"You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and it is not your province to single out one particular instruction and consider it to the exclusion of all the other instructions."—and

"I think, Ladies and Gentlemen, that during the trial I have made no comment on the facts and expressed no opinion in regard thereto; but if I have, or if you think I have, it is your duty to disregard that opinion entirely, or anything I may have said indicating such to you, because the responsibility for the determination of the facts in this case rests upon you and upon you alone, and should be decided by you solely from the evidence submitted in the case." (Tr. 207)

The law is settled that "All of the instructions should be considered together. If, when considered as a whole they state the law correctly and without conflict it is sufficient, although one or more standing alone may be incomplete, may contain inept or ambiguous language, or may state the law incorrectly or without sufficient qualification—As respects criminal cases it is sufficient if the series of instructions considered as a whole, fully and fairly announce the rules of law applicable to the

theory of the prosecution and the defense." 53 Am. Jur. Sec. 836 PP 612 and 613.

A case closely analogous to the one at Bar, in that exception was taken to a particular sentence of the instruction is that of Acers vs. United States, 164 U. S. 388, 17 Sup. Ct. 91, in which the Court stated:

"With reference to the charge in the matter of intent counsel for plaintiff challenge a single sentence, as follows: 'But you need not go to a thing of that kind, because the law says you may take the act itself as done, and from it you may find that it was wilfully done.' But this sentence is to be taken, not by itself alone, but in connection with many others, in order to determine what the Court instructed—"

Similarly in the present case when the sentence objected to is taken not by itself alone, but in connection with the rest of the instructions it is clear that the Court's charge placed the burden of proof on the Government to show "beyond a reasonable doubt that the defendant Maude Anderson was" concerned in the commission of the crime charged as an accomplice or principal.

X.

Argument Answering Appellant's Specification of Error (J)

Appellant contends there was no independent evidence as required by Section 5352, CLA 1933. to corroborate an accomplice's testimony. In this connection it is of interest to

note the interpretation given by other courts to statutes identical to Section 5352, CLA 1933. Uniformly the appellate courts take the position that the conviction will be sustained if the corroboration can be held to be sufficient taking the strongest statement of the case against the defendant that the evidence would warrant the jury finding if the facts were specially found. State v. Estabrook, 162 Ore. 476, 91 P 2d 838.

Intimate association with the accomplice at about the time of the crime may be sufficient corroboration. State vs. Brake, 99 Ore. 310, 195 P 583, and in State vs. Rosser, 91 P 2d 295 at 299 the Supreme Court of Oregon stated, "All that the statute requires is that in addition to the testimony of the accomplice or accomplices there be some evidence, however slight, tending to connect the defendant with the commission of the crime."

The California courts have upheld the same interpretation, stating in People vs. Briley, 48 P 2d 734, 9 Cal. App. 2d 84, "The corroboration of an accomplice required by Section 1111 need not be such as tends to establish the commission of the offense or to corroborate the precise fact testified to by the accomplice. (Cases cited)

"All that the law requires is that, in addition to the testimony of the accomplice, there be some evidence which, though slight, tends to connect the defendant with the commission of the offense. The testimony of the accomplice, standing alone, is sufficient to establish the commission of the crime charged.

(People vs. Richardson, 161 Cal. 552, 563, 120 P 20, People vs. Snyder, 74 Cal. App. 138, 239 P 705), and the extra judicial declarations of the defendant are sufficient corroboration to sustain a conviction where the effect of such declarations is to tend to connect him with the commission of the crime charged."

In People vs. Blunkall et al, 161 P 997, 31 Cal. App. 778, the court held: "The corroborating evidence is sufficient if it, of itself, tends to connect the defendant with the commission of the offense, although it is slight and entitled, when standing by itself, to little consideration. (See People vs. Melvane, 39 Cal. 616.)

"It is true as is contended that the corroborating testimony in this case consists of circumstantial evidence but the corroboration required by the section named may properly be made by circumstantial as well as by direct evidence."

In the light of these uniform interpretations of corroboration statutes identical with the one under discussion the corroborating evidence in this case is amply adequate. The facts warranting this conclusion are as follows:

1. The relationship between the witness Miller and defendant would lead to the belief she was acting for Maude Anderson in procuring the girl to be transported illegally. (Tr. 117, Testimony of Maude Anderson)

> "Q. What was Margie Miller's occupation at the time she was conversing with you about leasing the property from you?

A. She was running the place for me at that time, the Lake View Cotttage."

Thus the fact that Miller was appellant's agent in running a house of prostitution could be regarded by the jury as a fact corroborating her testimony that she was acting for appellant in procuring the girl illegally transported.

2. The testimony of witness Miller that three girls were sent to Maude Anderson at Anderson's request is corroborated by the fact that defendant had three vacant rooms when the witness Bowman arrived. (Tr. 165, Testimony of Maude Anderson)

"Q. Why did she bring Gloria Bowman into your room to see you, do you know?

A. No. I don't.

Q. Wasn't it because you were actually running that house and expecting Gloria Bowman to come and take that room?

A. There was other rooms besides that. There was other rooms. There were two more empty rooms.

Q. For girls you were expecting by airplane?

A. No.

Q. There were three available rooms?

A. That was Margie's room that she had moved out of."

It certainly is a strange coincidence that three girls were procured and Maude Anderson had facilities to employ the same number of girls.

3. The testimony of Elvira Cavender corroborates the witness Miller's testimony that she was sent to Seattle to procure girls for the defendant and that a code was made up to further this conspiracy. (Tr. p. 76, Testimony of Mrs. Elvira Cavender)

> "A. I happened to go in for a few minutes so I would be able to make change. Maude was telling Margie how she would send the telegram or letter, whichever she was supposed to do. It was supposed to be sent in the form of a code. It was clothing, some kind of clothing. I don't remember—coats or dresses. By the code it was in the form of clothing, and Margie was to send Maude in the form of a telegram.
>
> Q. To what were they referring when they were talking about this code?
>
> A. Well, it meant girls to bring up to Sitka."

Thus there is the testimony of another witness to corroborate the accomplice as to the origin of the plot.

4. In addition to this testimony of Mrs. Cavender the telegram itself amply corroborates Miller's testimony. In Paulsen et al vs. United States (9th Cir.) 199 F. 423, in the absence of incriminating testimony by the accomplice one of the principal grounds for the conviction of defendant on a charge of violation of the "White Slave Traffic Act" was the following telegram sent to defendant:

> "Seattle, Washington
> December 7, 1910
>
> "Nels Paulsen, Burke, Idaho. Wire $50 at once for violin player. Can you use cornet player? If so, can

get two more A No. 1. I would take him for a while I think. You can get him for three and the violin for three fifty. That will make four. Besides I am going to Everett in the morning for the others. R. is here. Will see her to-morrow morning. Answer in regard to cornet.

"Mrs. Nels Paulsen."

Evidently the jury was considered a competent judge of what was meant by the wire in that case as the conviction was upheld. There does not even appear to have been any testimony translating the meaning of the telegram in the Paulsen case.

In the present case appellant attempts to infer that this telegram is evidence manufactured by the witness Miller to incriminate the defendant. This cannot be the fact, however, as even by appellant's theory Miller had no grounds for animus against Maude Anderson at the time the wire was sent. The defendant testified (Tr. 159) as to her relationship with Miller at the time the latter went to Seattle as follows:

"A. Yes, we had no arguments.

Q. You were friendly were you not?

A. Yes."

Furthermore, the defendant's own testimony as to how she regarded the telegram proves itself to be false and leads to the conclusion that she actually knew the wire's meaning. She states (Tr. P 158 & 159)

"Q. Isn't it true, Mrs. Anderson, the reference in the telegram to air mail referred to sending prostitutes up by air plane? Isn't that true?

A. No. I don't remember what that meant.

Q. You don't remember what that meant?

A. I don't know what that telegram meant. I didn't pay any attention to it. I don't know what she meant by that telegram. That is why I didn't bother about it."

It is submitted that this would not be the attitude of a person who receives a mysterious telegram. It would be a matter of great curiosity rather than something to ignore.

5. The witness Bowman's testimony that she took the trip for the purpose of working in a house of prostitution for Maude Anderson corroborates the witness Miller's testimony that she caused the girl to be transported for Maude Anderson. Had Miller been procuring girls to work for herself (Miller) Bowman would not have testified:

"Q. What were you going to Sitka for?

A. To work in a house of prostitution.

Q. Any particular house?

A. Yes. Maude Anderson's."

And on cross examination the following testimony was given (Tr. 93):

Q. Did Margie tell you down there—how long did you talk to Margie in the Atwood Hotel when Billy Day had taken you there?

A. Not more than half an hour.

Q. Did she tell you at that time that a new house was being built for her in Sitka?

A. No.

Q. She didn't mention it at all?

A. She didn't mention it at all.

Q. Did she tell you she wanted you to work for her?

A. No.

Q. You never heard anything of that kind there?

A. No."

This certainly is corroboration of the accomplice Miller's testimony that she procured the girl to be transported for Maude Anderson and this testimony in itself would be sufficient for the Court to leave the question of corroboration to the jury.

Appellant argues that this evidence does not corroborate the witness Miller's testimony because the instructions were given to Bowman by Miller. But independent proof such as this, that Miller did give these instructions, clearly corroborates the accomplice's testimony on the material issue of her procuring the girl to be transported so that she could become a prostitute for Maude Anderson. Miller would not have given those instructions had she been procuring girls for herself.

6. The appellant's conduct at the time of Bowman's arrival in Sitka fully corroborates the accomplice's testimony as to Maude Anderson's complicity in the plot to transport the girl illegally. According to Bowman's testimony (Tr. 87), when she entered Maude Anderson's house appellant asked her if

she was "the girl from the States," indicating clearly that Bowman's arrival was no surprise. But it would have been a surprise had Maude Anderson not been involved in the plot to have the girl illegally transported to Sitka. Appellant's further actions of promptly assigning Bowman to a newly-prepared room, sending her to the doctors and to the Police Department, and putting her to work as a prostitute on the night of her arrival is striking corroboration of the accomplice's testimony that she procured the girl FOR Maude Anderson. It is hard to imagine independent evidence more clearly connecting a defendant with a crime than this actual conduct of Maude Anderson upon the arrival of the girl.

7. The fact that Maude Anderson asked Bowman to repay her the money advanced by the witness Miller for the purpose of furnishing Bowman with means for transportation from Seattle to Alaska corroborates the accomplice's testimony that the $70.00 was advanced for appellant under a previous agreement and was to be paid back to Maude Anderson.

The witness Bowman stated: "Down in Seattle I received $70.00 or close to it from Margie Miller and I was supposed to pay Maude Anderson." (Tr. 88), and later: (Tr. 89)

"Q. At any time did Maude ever mention the money advanced to you for transportation?

A. Yes.

Q. When and where was that?

A. Before I left.

Q. About when?

A. Close to the time before I left her.

Q. When did you say? Before you left her house or Sitka?

A. Before I left her house.

Q. Around about that time? A. Yes.

Q. And what was it she said about this money?

A. She just wanted me to pay her the money back.

Q. At the time Maude requested you to pay this money to her, which was advanced for transportation, was Margie Miller back in Sitka at that time? A. No."

The appellant herself testified that Margie Miller never asked her if she had collected the $70.00 from Gloria Bowman. It is submitted that this inquiry would certainly have been made had the agreement been for the appellant to collect the money for her accomplice. Thus, if Bowman's testimony is to be believed (and that is a question that only the jury which had the opportunity of judging her conduct and demeanor on the stand can decide) the accomplice's testimony that the money was advanced for Maude Anderson to secure the transportation of Bowman to appellant's house of prostitution is corroborated.

In the face of this wealth of independent corroborating evidence appellant attempts to rely on the statement in State vs. Scott, 42, P. 1, that "the corroborative evidence must relate to some portion of the testimony which is material to the issue." All of the evidence discussed above is material to the issues involved in this case as to whether Maude Anderson did

cause Gloria Bowman to be transported, or aided or assisted in obtaining transportation for her in interstate or foreign commerce for the purpose of prostitution. This same evidence clearly connects Maude Anderson with the commission of the crime.

In Harris et al vs. United States, 114 CCA 406, 194 Fed. 634 affirmed 227 U. S. 340, 33 Sup. Ct. Rep. 289 (cited supra) defendant was convicted on less evidence than the independent evidence corroborating witness Miller in this case, although in the Harris case the defendant's agent, Green, denied acting for the defendant. The Court stated: "Inasmuch as there was nothing unlawful, under this statute, in receiving these women or advancing the charges on their baggage, conviction must rest on the theory that respondent Green went to Charleston and advanced the railroad fare while acting as agent for the respondent Harris. This is explicitly denied by respondent Green as a witness. The circumstances that she went away and soon returned with the other women is consistent with the theory of guilt, but it is not seriously inconsistent with the theory that Green acted for herself only. The keeper of such a resort who receives inmates knowing that they have just come from another state and knowing the purpose for which they came and who then advances them money incident to their journey, and who finds that a jury has concluded that she instigated the journey, cannot say that the verdict is without support, because the jury's conclusion is drawn from circumstances which in another environment might not have led to the same inference."

Certainly evidence sufficient in itself to convict a defendant of violating the Mann Act is more than adequate to corroborate an accomplice. In the case at Bar, Miller, like Green, worked for the defendant at a house of prostitution, went away, and returned with a girl for the house. Maude Anderson, like Harris, received the girl and employed her as a prostitute, knowing she had just come from the States and knowing the purpose for which she came. While Harris gave an advance to the girls after their arrival, Anderson attempted to collect an advance previously made to Bowman.

In addition to the evidence on which the conviction was sustained in the Harris Case, in the present case a witness testified to a code having been made by the accomplice and appellant about procuring girls; the telegram resulting therefrom was introduced into evidence; and there is testimony to show there were three girls shipped up and three bedrooms awaiting their arrival at Maude Anderson's house of prostitution.

Thus, in the present case, rather than the mere corroboration required by the statute of "some evidence, however slight, tending to connect the defendant with the commission of the crime" (See State vs. Rosser 91 P 2d 295 at 299 cited supra) there is more than enough evidence independent of the testimony of the accomplice Miller to sustain a conviction for violation of the White Slave Traffic Act.

CONCLUSION

For the foregoing reasons, appellee respectfully submits that no reversible error was committed and that the judgment of the Trial Court ought to be affirmed.

Respectfully submitted,

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